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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1928.

Nos. 131, 132.

THE ST. LOUIS & O'FALLON RAILWAY COMPANY, and MANUFACTURERS' RY. CO.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION,

Appellees.

THE UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

THE ST LOUIS & O'FALLON RAILWAY COMPANY, and MANUFACTURERS' RY. CO.,

Appellees.

MOTION

FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN BEHALF OF THE NATIONAL CONFERENCE ON VALUATION OF AMERICAN RAILROADS AND FOR LEAVE TO PARTICIPATE IN THE ORAL ARGUMENT AS AMICUS CURIAE.

DONALD R. RICHBERG,
General Counsel, National Conference On Valuation of American Railroads, as Amicus Curiae.

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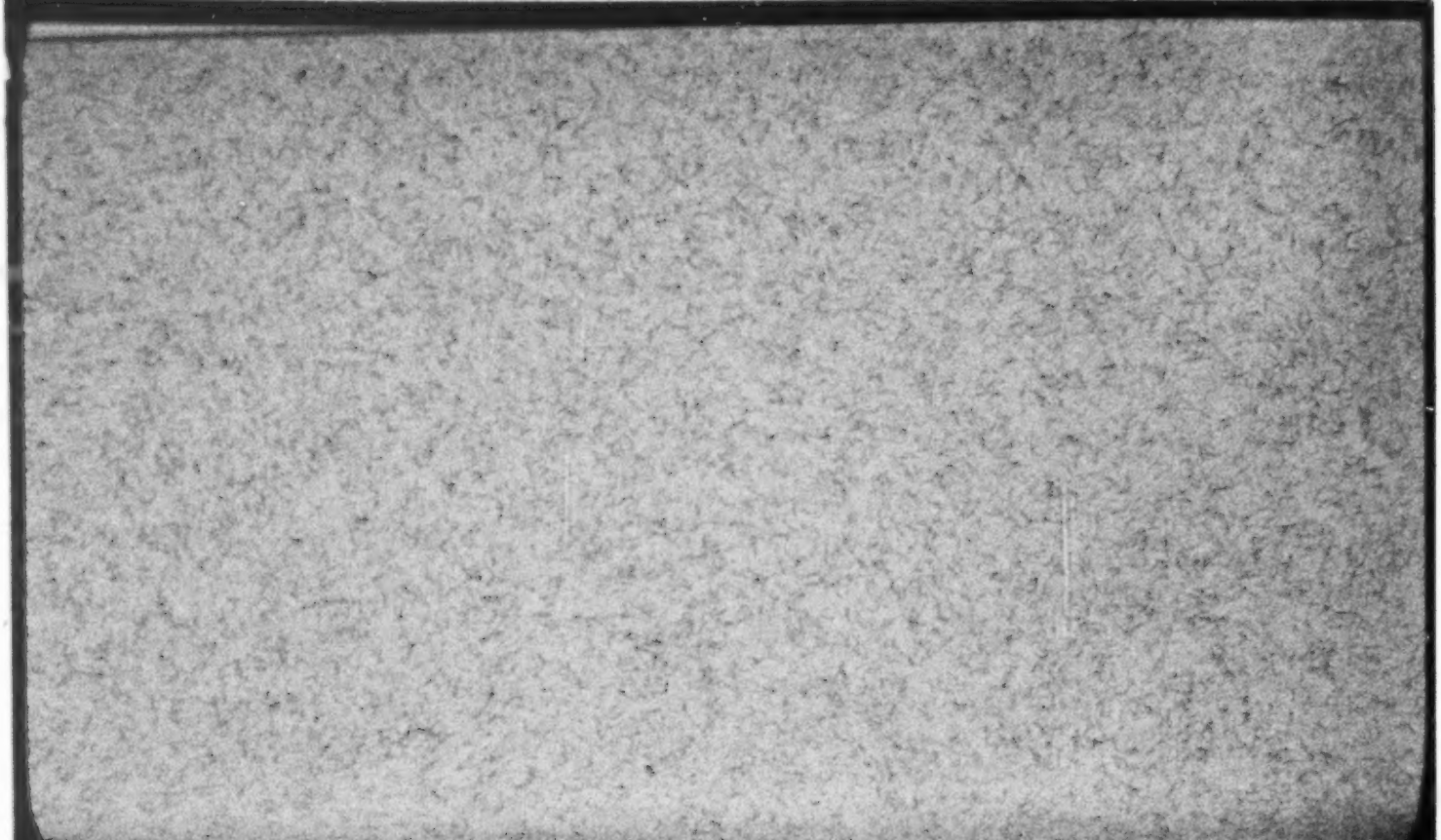

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MAY IT PLEASE THE COURT:

The undersigned, as counsel for the National Conference on Valuation of American Railroads, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae;* and for leave to par-

ticipate in the oral argument of this case, as *amicus curiae;* and in support of this motion offers the following reasons:

1. The issues in this case are of extraordinary public concern and involve many phases and theories of public interest, all of which cannot be presented consistently by one counsel, and some of which, therefore, will not be presented by counsel for the United States and the Interstate Commerce Commission.

2. The National Conference on Valuation of American Railroads was organized as a permanent organization in 1923, for the purpose of conserving the public interests in the valuation of the railroads being made by the Interstate Commerce Commission, through the co-operation of members of the United States Senate and House of Representatives, Governors of various States and Mayors of large cities (including New York and Chicago) agricultural, commercial and labor organizations (including the principal railway labor organizations) and a large number of individuals representing shipping, consuming and other public interests. The chairman of said Conference, from its organization to his death, was the late Senator Robert M. La Follette, being himself the author of the Valuation Act, under which the Interstate Commerce Commission has been proceeding; and the present chairman is Senator George W. Norris of Nebraska, chairman of the Committee on the Judiciary of the United States Senate.

3. By orders of the Interstate Commerce Commission the said National Conference was granted later in the year 1923 the right to intervene in and be a party to any and all valuation proceedings under Section 19a of the Interstate Commerce Act and to receive notice of any and all hearings in valuation proceedings and to be informed of all orders and reports of the Commission in connection therewith, and of any and all legal proceedings brought by and against the

Commission involving its powers and duties under Section 19a; and subsequently the said Commission by order authorized the said National Conference to intervene upon request in any proceeding before the Commission under Section 15a of the Interstate Commerce Act. As a result of said orders the said National Conference, through its present counsel, has been participating for many years in the hearings before the Commission and other proceedings involving the valuation of the railroads.

4. The said National Conference, through its present general counsel, was specifically authorized by order of the Interstate Commerce Commission, entered June 5, 1926, to intervene in "Finance Docket No. 3908, Excess Income of St. Louis and O'Fallon Railway Company," and "Finance Docket No. 4026, Excess Income of Manufacturers Railway Company," for the purpose of being heard in the arguments therein; and said Conference, through its present general counsel, filed briefs and participated in the oral arguments before the Interstate Commerce Commission in the proceedings out of which came the order of the Commission here involved. (R. 38; R. 647.) In said proceedings, the said National Conference was the only party who, through its counsel, supported the tentative report under consideration, which was substantially approved and sustained in the final report of the Commission.

5. As a party to the aforesaid proceeding before the Interstate Commerce Commission, wherein was made the order which the carriers herein are seeking to have set aside, the National Conference through its counsel sought to intervene in the proceedings in the statutory three judge court from which this appeal is prosecuted, in accordance with the provision of the Judicial Code, Section 212, providing that any party to a proceeding before the Interstate Commerce Commission may as of right become a party to "any suit wherein is involved the validity of such order,"

and in accordance with the interpretation of such provision by the Supreme Court in the *Baltimore and Ohio Railroad Company, et al.* v. *United States of America, et al.*, 264 U. S. 258, 267. The statutory three judge court, although denying leave to intervene, permitted counsel for the National Conference to appear, argue and file a brief, and present counsel did file a brief in behalf of the National Conference. (R. 121.)

6. Recognizing that an application for leave to be heard as *amicus curiae* in this case, in oral or written argument, would be addressed to the discretion of the court, and involve consideration of public interests and the extent to which the same might be represented through counsel for the said National Conference, the Senate of the United States, in a resolution passed by a vote of 46 yeas and 31 noes on May 7, 1928, expressed its approval of the application of counsel for the National Conference for leave to participate in the hearing of this case, for the reasons stated in said Senate Resolution No. 222, heretofore formally transmitted to the court, to which counsel begs leave to refer for a further statement of reasons in support of this motion.

7. Counsel for the National Conference begs leave to refer to the statement and summary of argument contained in the accompanying brief, which he seeks to file as *amicus curiae*, for an outline of the position taken by counsel and for a further statement of the reasons for the motion now made for leave to file this brief and to participate in the oral argument of this case.

Respectfully submitted,

DONALD R. RICHBERG,

Counsel for the National Conference on Valuation of American Railroads, as Amicus Curiae.